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BEFORE THE STATE BAR COURT

OF THE STATE OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of JOSEPH LAWRENCE DUNN, Member No. 123063, A Member of the State Bar.	SBC Case No. 22-O-30655 **RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**

TO THE OFFICE OF THE CHIEF TRIAL COUNSEL OF THE STATE BAR OF CALIFORNIA AND TO ITS COUNSEL OF RECORD:

Respondent JOSEPH LAWRENCE DUNN ("Dunn") responds to the Notice of Disciplinary Charges ("NDC") as follows:

SUMMARY OF RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

DUNN FULFILLED ALL HIS DUTIES WHILE SERVING IN THE CAPACITY OF STATE BAR EXECUTIVE DIRECTOR

A. AB 852

The uncontroverted evidence unequivocally establishes that Sen. Dunn never made any material misrepresentations at any time. Among the true and uncontradicted facts are the following:

The allegation that Dunn misled the State Bar Board of Trustees ("BOT") whether there was any "known opposition" to proposed Assembly Bill 852 before the Board voted to sponsor AB 852 in May 2014 is patently untrue. In truth, then Supreme Court liaison to the State Bar, Beth Jay, testified that the Supreme Court was seeking more information about the bill.

As an initial matter, to "pause a bill" so that the Court can study further before taking its position does not constitute a formal "opposition" to the bill. The term "opposition" has a specific meaning within the legislative process. The term of art does not include expressions of concern, requests for information, or proposals to amend a bill before it is formally presented for vote. Members of State Bar's Board Operations Committee knew the Supreme Court wanted more information regarding AB 852 when they voted to add the sponsorship request to the full Board's consent agenda for the May 9, 2014 meeting. Emails, testimony, and sworn declarations all confirm that.

Further, being listed as a sponsor is not the equivalent of "supporting" a bill—as sponsors of bills can ultimately oppose those same bills. Generally, the sponsorship question comes early on at the start of the legislative process and the official "support" position comes just before the first hearing on the bill. Here, the first hearing on AB 852 was set to occur sometime in mid-June of 2014.

Most importantly, becoming a sponsor of a bill is also immaterial to whether and how a bill moves through the legislative process, as the title of "sponsor" is a purely ceremonial and primarily used for reasons un-related to its passing.

In a May 9, 2014 email exchange between Dunn attorney Beth Jay—which notably took place *after* the Board's vote to sponsor AB 852—Jay did not state that the Supreme Court had instructed

the State Bar to "stop" Assemblymember Dickinson's bill. To the contrary, Jay reaffirmed that the Supreme Court had "*interest in the bill....*" (Emphasis added), which again does not constitute "opposition". In fact, the year before, the State Bar had sponsored *and* supported AB 852's predecessor bill, AB 888, which had been introduced in 2013, passed by both legislative branches, and was unopposed by the Supreme Court. The bill failed when it reached the desk of the governor, who vetoed it.

Likewise, in Jay's earlier April 10, 2014 email *to State Bar lobbyist Jennifer Wada* with copies to others, in which she stated that the bar's position on AB 852 must be neutral, Jay also indicated that the court was interested in looking at the proposed legislation "*and possibly weighing in* (emphasis added)." In Jay's April 24, 2014 email *to State Bar General Counsel Thom Miller*, Jay was asking for additional information and stated that "the court wants this stopped *until it has time to gather additional information* (emphasis added)." In sworn testimony Jay testified in answer to the question: "On April 25th, you wanted it stopped until you gather further information You didn't say kill it. You didn't say anything else. You just said further information, right?" The unequivocal response of Jay was: "That's what I always said, yes." Jay also testified: "Q. You said you wanted no more involvement in making the bill progress; correct?" "A. Yes." "Q. You wanted, in essence, to press pause; correct?" "A. To press stop at that point or pause, however you want to put it, but things to freeze."[1] The Chief Justice testified regarding AB 852, and their transcript is under seal, notably outside counsel despite several offers never sought to unseal—let alone review her sworn testimony. Suffice to say, there is no support for the accusations in this NDC.

Dunn was not told to "kill" AB 852 before May 9, 2014. All contemporaneous communications demonstrate that the Supreme Court wanted more information about AB 852. The Court's lobbying team in the Administrative Office of the Courts, which expresses the Supreme Court's concerns on legislation was silent as well. The Supreme Court's position was known to members of the BOT who confirmed this knowledge through sworn testimony during Dunn's arbitration. The true fact is that Dunn communicated with the author of the bill; it was allowed to die; and that from the time AB 852 was initially introduced, to the time it died, the bill *never* moved forward in the legislative process.

[1] It cannot be overemphasized that a bill cannot actually be "paused." The legislative deadlines for moving a bill forward are set in stone. As the contemporaneous emails amply demonstrate, in late April, Jay was communicating with State Bar General Counsel Thom Miller about gathering additional information, the changes that were being made to AB 852, and further discussions needed to be had. Jay was personally involved in discussions regarding ongoing changes to the draft bill. Moreover, Miller told Jay that changes would continue to be made into June 2014. These facts cannot be disputed, and they confirm that while the Supreme Court had certain concerns about the draft bill, Jay was well aware that discussions with the author were continuing, and the Supreme Court's concerns were being addressed.

In stark contradiction to the State Bar's allegations, Board members corroborated their personal knowledge that: communications between the State Bar and the Supreme Court could not be mentioned in public meetings. Board members were aware that the Supreme Court was raising concerns about AB 852 prior to the BOT's May 2014 meeting; and that AB 852 would not be pursued notwithstanding the consent agenda vote to approve the State Bar as a sponsor of AB 852 on May 9, 2014.

Dunn—and other State Bar employees, including other lawyers—were well aware that the author of AB 852, Assemblymember Roger Dickinson, was committed to the legislation, which had gone through the legislature with State Bar support the year before. Additionally, the legislation was extremely important to then State Bar President Luis Rodriguez, the first Latino president of the Bar in its almost 100-year history. Protecting the Latino community from unethical lawyers and those engaged in the unauthorized practice of law (UPL) was Bar President Rodriguez' highest priority. AB 852 increased the Bar's power to deal more effectively with UPL schemes directed at the Latino immigrant community.

Tellingly, Rodriguez testified under oath in the arbitration between Dunn and the State Bar that AB 852 "absolutely" was important to him. Rodriguez and other Board members also testified explicitly and repeatedly that it was untrue that Dunn had misled the State Bar Board about AB 852. Moreover, Rodriguez corroborated the fact that there was never to be any public mention of internal communications between the Supreme Court and the Bar: the custom and practice of avoiding any mention of communications between the Supreme Court and the State Bar Board regarding (pending) legislation long preceded Rodriguez' State Bar BOT involvement. Additionally, Rodriguez testified under oath that he spoke with Beth Jay, and she never told him to "stop" AB 852; rather she indicated that the bill needed to be monitored.

Rodriguez has stated that both Jennifer Wada, the Bar's contract lobbyist, and Dunn did advise the Board Operations Committee that a major stakeholder had concerns about AB 852, and that they could not "move full bore on this." Jennifer Wada also explained in her interview with MTO that she participated in the briefing in the Board Ops Committee Meeting regarding the concerns that had been expressed about AB 852.

The Board Operations Committee was the entity that heard these concerns and nevertheless voted to put AB 852 on the consent calendar for the May 9, 2014, BOT Meeting. Thus, it was not Dunn, but "Board Ops" that decided to place the issue of sponsorship of AB 852 on the consent calendar. SDTC apparently does not understand this protocol.

Given his extensive prior experience as a legislator and other government positions, Dunn was expressly aware of the need to balance the interests of the legislature and the Supreme Court, and to carry out the directions of the State Bar leadership, notably the President of the State Bar. The State Bar has a long history of difficulties with the legislature and in particular, attaining passage of the annual dues bill.[2] For Assemblymember Dickinson, one of those issues was his work to protect the large Latino immigrant community in the Sacramento area. To publicly renege on the sponsorship of AB 852, after it had sponsored AB 888 the year before, would have specifically caused damage in the Bar's relationship with Assemblymember Dickinson going forward.

Importantly, the legislative agenda and the purported misrepresentation that there was "no known opposition" to AB 852 was set forth in a memo drafted by others. For each agenda item that asks for a vote from either the Board Ops Committee meetings or the full Board of Trustees meetings, a written memo is prepared and made publicly available several days before the actual meetings for anyone to oppose. In 2014, the General Counsel was Thom Miller. Notably, Miller sent an email and memo to Beth Jay on April 15, 2014 further detailing AB 852, stating: "[t]he State Bar is the sponsor of AB 852 and supports its passage." Nowhere in any of the numerous email exchanges that took place between Jay receiving Miller's memo and the BOT meeting on May 9, did Jay communicate to anyone that the State Bar should refrain from sponsoring AB 852. Whether or not the State Bar agreed to be designated as a sponsor of a bill did not affect the bill's author's decision whether or not to pursue passage of the bill. Nor did the designation of the State Bar as a sponsor of AB 852 have any effect on the Supreme Court's directive to pause the bill; the designation of a sponsor has *no effect* on the bill's progression through the legislative process. Moreover, the decision to pursue a bill resides exclusively with its author. The Supreme Court cannot dictate that a legislator abandon proposed legislation; however, the Supreme Court had its own lobbyist and was free to communicate directly with Assemblymember Dickinson.

Contrary to the allegations against Dunn, he did not unilaterally or exclusively arrange for the item to be placed on the Consent Agenda. In the case of AB 852, besides Dunn, many other individuals were involved in presenting the bill to the Board. In 2014, the memos for any agenda item related to legislation were drafted primarily by either Assistant General Counsel Larry Yee (now deceased) or Saul Bercovitch in the GC office, then reviewed by both Jennifer Wada and Joe Dunn, then submitted to both the chairs of Board Ops Committee and the Board of Trustees for final

[2] Assemblymember Dickenson was facing off against another Democratic Legislator for a Senate seat, and he was committed to introduce new legislation to benefit his district.

approval. Ideally, such requests are submitted to the secretary for the Board Ops Committee, then reviewed by the General Counsel's office as well as by the senior member of the management team most affected by the proposed item.

The State Bar's lobbyist Jennifer Wada, State Bar General Counsel Thom Miller, and other lawyers in the GC office including Messrs. Yee and Bercovitch, State Bar President Rodriguez and the Supreme Court's legislative representative, Daniel Pone, all were aware that the Supreme Court was requesting a pause re: AB 852 *and none of them expressed any concern about the State Bar's brief and inconsequential ceremonial sponsorship of the bill while this happened.* This was because the bill was in fact paused, Dunn did not encourage its continuing progress, Assemblymember Dickinson did not take any further action on the bill, and the vote on sponsorship was and is a moot issue.

Furthermore, then-Chief Trial Counsel Jayne Kim[3] owed the same direct reporting requirement to the BOT that Dunn had. Three State Bar positions had this fiduciary duty and direct line of contact to the Board: 1) the Chief Trial Counsel – then Jayne Kim, 2) the Executive Director – then Dunn, and 3) the General Counsel – then Thom Miller. All three individuals knew about the Supreme Court's position and yet, inexplicably, the State Bar is only charging Dunn with breaching his duty.

In fact, both Jayne Kim and Jim Fox were present at the May 9, 2014 Board meeting where the Board voted to sponsor AB 852 and immediately left the room following the vote to contact Beth Jay. It is worth noting that Kim and Fox were not present at the Board Ops meeting several days prior where Dunn and Wada raised the Supreme Court's issues. Therefore, the original complainant had no knowledge as to whether or not Board members had knowledge of the Court's position at the time of the vote.

If the Chief Trial Counsel had genuinely believed in real time that AB 852 should not have been on the consent calendar due to the Supreme Court's concerns, she had a duty to directly report to the Board in satisfaction of her fiduciary obligations. Instead, she bypassed her duty and reported this information to Beth Jay who had no power to correct any alleged misrepresentation.

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[3] The Office of Chief Trial Counsel (OCTC) is the division within the State Bar responsible for prosecuting misconduct in the State Bar Court. During the relevant time period, Jayne Kim served as Chief Trial Counsel, the top executive position within OCTC.

B. Mongolia Trip Expenses

The State Bar accuses Dunn of making a false statement to the Board of Trustees that no State Bar funds were used to cover a portion of his travel expenses to Mongolia (economy class plane tickets and cellular phone roaming charges) that occurred in January of 2014 for purposes of training Mongolia's new lawyer regulators in that emerging democracy. Dunn did not make that statement before the educational trip to Mongolia.

As an initial matter, Dunn had no reason to conceal or misrepresent the fact that Bar funds were going to cover a portion of the January 2014 trip to Mongolia because such expenses were already included within the previously approved annual budget, as part of funds allotted for education related expenses. Such expenses are entirely within the discretion of senior management as long as the combined total of all education related expenses do not exceed the amount allotted within the annual budget. Put simply, there was no need to make a false statement or mislead the Board regarding this matter because Dunn did not need Board approval of these costs for the trip.

Neither Dunn nor anyone else participating in the January 2014 trip was made aware that State Bar funds were not to be used for an international educational trip similar to those which State Bar staff and Board members had historically participated in, and in similar trips in which others continued to participate after Dunn joined the Mongolia delegation. In fact, then-acting CFO Peggy Van Horn pointed out that, even if the expenses had been paid from the involuntary annual dues funds account, a simple bookkeeping adjustment could be made so that voluntary funds not subject to statutory limitation could be used to resolve any issue of the source of payment of the relatively modest amount that was paid to defray Dunn's and the other State Bar representative's economy plane fare as well as Dunn's cell phone roaming charges (due to work calls with State Bar staff in San Francisco during which, Dunn worked throughout the night prior to each day of the seminar to get approval on final PowerPoint presentations).

Additionally, Dunn extended an invitation to be part of the effort that was going to Mongolia to then-acting Bar President Rodriguez who raised no concerns or issues about State Bar staff's participation but declined for personal reasons. Moreover, Dunn spoke with Larry Yee, a State Bar Deputy General Counsel at the time, to make sure Yee did not see any issues with giving the seminar in Mongolia. Neither President Rodriguez nor General Counsel Yee had any issues with Dunn's attendance or the travel expenses.

Rather, a line in a Daily Journal Op-Ed piece *subsequently* penned by co-participant Howard Miller[4] was the trigger for the allegation that no State Bar funds were to be used for the Mongolia trip, and that Dunn breached a duty in connection with having his economy class plane fare and cellphone roaming charges (only) paid by the State Bar. Approximately 3 ½ months after the successful Mongolia trip, Howard Miller wrote a Daily Journal Op-Ed piece describing the 2 ½ day educational trip and proposing additional similar trips in the future. Dunn had no involvement in drafting that Op-Ed piece.

The State Bar asserts that Dunn communicated to the BOT during a November 2013 meeting that no State Bar funds would be used for the January 2014 Mongolia trip. This allegation is directly contradicted by the publicly available Board meeting minutes which contain no reference to the January 2014 Mongolia trip's expenses. The Board Secretary's task is to include all topics addressed at each meeting in draft minutes which are then reviewed by any of the following, depending on the clarification needed to complete the draft: staff or others who had presented materials or otherwise spoken at the meeting, board/board committee members, OGC, CEO, or the board president. Approval of the minutes is then placed on the next meeting agenda and the draft minutes were uploaded to the agenda and published on the State Bar's website. At the board meeting, the board president would ask if there were any questions/comments/corrections to the minutes. If none were heard, the minutes were deemed approved. If there were revisions to the minutes, either another motion would be made at the same meeting to approve the minutes with the revision or, if more time was needed, revised draft minutes would be placed on the next board meeting agenda for approval.

If Dunn brought up expenses for the January 2014 Mongolia trip, the meeting minutes would have reflected that. They do not because they were not mentioned. This is especially so if the State Bar views those expenses as a matter of significance requiring disclosure to the Board. Tellingly, the Board minutes contain no reference. This is after the BOT, including Craig Holden, had the opportunity to review the minutes. Holden admitted in his arbitration testimony that after he had the opportunity to review the draft November 2014 Board Meeting minutes, he voted with a *unanimous* Board to approve the minutes. Tellingly, the Board did not need to be appraised of this matter because there was no need for Board approval of these costs or the trip.

Moreover, CTC Jayne Kim conceded in her July 31, 2014 complaint against Dunn that it was known that State Bar funds were proposed to be used to pay for portions of the trip:

[4] Howard Miller is a highly respected member of the California State Bar, a former State Bar President, a former law professor and bar review course titan, who is currently an arbitrator at JAMs

"Prior to the January 2014 trip to Mongolia, both the ED and Howard Miller stated that the Mongolians would not cover the costs of airfare for State Bar staff or Howard Miller…"

There is no question that the Mongolian government did in fact pay for the remaining expenses of the trip. Dunn never represented to the Board that no State Bar funds would be used for the travel expenses in connection with the Mongolia trip.

The opportunity to train the Mongolian attorney regulators was initiated by direct invitation from the Mongolian government sometime in the middle of 2013. This was similar to many prior similar projects, in which American judges and lawyers are invited to assist in the formation of new democratic and legal systems. As a result of Dunn negotiating with Mongolia, the vast majority of the expense was borne by the Mongolian government, with the State Bar contributing just the economy class airplane ticket cost, and minimal mobile phone charges.

The trip was difficult since it was a long flight to Mongolia, it was brutally cold (-30 degrees), and between the 2 ½ day seminar, the schedule was packed and non-stop with Dunn spending most of the nights reworking the power points for each day's presentation. During the remaining time Dunn spent there, he was meeting with many of the high up government officials. Immediately after the seminar concluded, Dunn and the other State Bar affiliated personnel returned to California. Shortly after the seminar's conclusion, the United States State Department which was monitoring the seminar reached out to the State Bar asking that the Bar conduct more presentations for emerging democracies, starting with Macedonia.

The mischaracterization by the Special Trial Counsel of the State Bar's relatively minimal financial contribution to a worthy educational project supported by the State Department and the State Bar itself as the result of a misrepresentation by Dunn is false.

THE CHARGES ARE TIME BARRED

While Dunn respectfully contests the current charges against him on their merits, it is also imperative to address the blatant and unjustified delay in filing this proceeding. The charges against Dunn are based on alleged actions that took place over eight years ago. While the State Bar claims the statute of limitations does not apply in this matter because these disciplinary charges are brought based on an "independent source," i.e., a final arbitration award in Dunn's wrongful termination suit, the Notice of Disciplinary Charges ignores the fact that Jayne Kim, in her individual capacity, authored the underlying complaint against Dunn that led to his termination that prompted the Arbitration. Kim labeled the complaint as a "report of improper activity". Simply put, the State Bar

knew of the exact basis of this proceeding as soon as Kim made her complaint in July 2014; these allegations are thus time-barred.

DUNN WAS APPOINTED EXECUTIVE DIRECTOR OF THE CALIFORNIA STATE BAR TO BE ITS "CHANGE AGENT"

As a direct result of Dunn's exemplary career, he was asked by statewide bar and judicial leaders to apply for the Bar's CEO position when it opened in 2010. At that time, there were two crucial tasks that needed to be accomplished: OCTC had an ongoing and intractable backlog problem, which was seen as public protection issue; and the State Bar needed better relationships with the legislature, judiciary, and its SEIU union. With respect to mending relations with the judiciary, Dunn was specifically tasked with working to build closer relationships with superior court and state judges.

In 2009, the California Bureau of State Audits conducted a complete audit of the State Bar's disciplinary system. They highlighted the backlog reporting process and shined light on the failure of the State Bar to include all backlog cases in the annual discipline report. The report called for more transparency in the reporting of backlog cases to give stakeholders a clear picture of the State Bar's effectiveness. The Audit Report stated: "By not reporting consistently and including all pertinent information, the State Bar is limiting its stakeholders' and the Legislatures ability to measure the effectiveness of the discipline system."

Dunn was strategically appointed as Executive Director in 2010, in the wake of this highly critical audit, with the directive to reform the State Bar by bringing fiscal responsibility and transparency to the State Bar's reporting obligations. He immediately addressed this matter by issuing an internal order clarifying that with respect to the annual reporting of backlog numbers, that OCTC personnel was to include all cases whether or not an individual personally thought a matter did not need to be included in the backlog data.

Being responsible for improving and stabilizing the environment inside the State Bar and mending relationships with the legislature, judiciary, and State Bar union, it was known by BOT members that Dunn was hired by the State Bar to be its "change agent."

DUNN'S DISCOVERY OF ETHICAL BREACHES – UNLAWFUL REMOVAL OF BACKLOG, FISCAL IMPROPRIETIES, & LEGISLATIVE COMPLIANCE FAILURES: IMPROPER MOTIVES BEHIND TERMINATION OF DUNN'S EMPLOYMENT

As a result of Dunn's many needed reforms at the State Bar, he learned of improprieties being committed by various leaders at the State Bar. Understanding this background is critical to understanding why baseless allegations were leveled against Dunn by a small number of individuals.

In late 2013, Dunn discovered serious discrepancies in the official backlog numbers that Kim, as head of OCTC, was required to publicly report under oath annually to the BOT, the Supreme Court of California, the legislature, and to the public. One of the most critical metrics used by the Legislature, Governor, and California Supreme Court to hold the State Bar accountable and determine the State Bar's progress and use of public funds is how it handles "backlog reporting."

Dunn's internal order eliminated any doubt about what was required to constitute accurate and authentic backlog reporting. Dunn recognized the statutory and legal obligations of accurately reporting backlog and the consequences of issuing fraudulent reports to the legislature. Dunn exercised due diligence and discovered that CTC Kim had underreported the number of cases in which an investigation had been completed, and sufficient evidence found to pursue disciplinary charges against an attorney, but the Notice of Disciplinary Charges ("NDC") had not yet been filed. These matters, referred to as "notice open cases," are a high priority because the offending attorney may present an ongoing threat to clients and the legal system.

In or around September of 2013, Dunn confronted OCTC Chief Trial Counsel Jayne Kim about the apparent underreporting of "notice open" backlog. Kim denied any wrongdoing or mistake.

In or around November of 2013, Dunn reviewed the backlog report to the Regulation Admissions & Discipline ("RAD") Committee of the State Bar submitted by Ms. Kim for the period ending September 30, 2013. Dunn noticed a significant drop in the number of open backlog cases described in the report. There was no disclosure in Kim's report to account for the unusual drop in backlog inventory. Dunn also noticed that State Bar Initiated ("SBI") backlogged cases had disappeared from the backlog list.

In early December 2013, Dunn asked Kim about the removal of the SBI cases from the reports she issued to RAD, and whether or not SBI cases were included in prior reports. Ms. Kim denied there was any decrease and denied any errors in the reporting.

In early 2014, Dunn launched a more formal investigation into what appeared to be Kim's manipulation of the backlog numbers and ultimately uncovered that at Kim's direction, internal reports were altered to unlawfully remove cases from the statutory backlog.

Kim did not resign from her position as CTC following the overwhelming vote of "no confidence" regarding her leadership cast by her OCTC staff; she did resign shortly after a news source reported that hundreds of uninvestigated complaints alleging unauthorized practice of law by non-attorneys were discovered in drawers OCTC's offices. Of course, Dunn had already brought to light the underreporting of the "notice open" cases supervised by Kim.

At about the same time during the end of 2013 and first quarter of 2014, Dunn also began exploring ways to address ongoing problems in California relating to the Unauthorized Practice of Law (UPL); a spike had occurred in UPL activities to the detriment of the undocumented community. State Bar President Luis Rodriguez and members of the legislature had expressed interest in improving enforcement against UPL activities, and Dunn was involved in this effort. Establishing a new effort regarding UPL enforcement was a key goal of President Rodriguez and supported by the BOT.

After learning of Dunn's investigation into her wrongdoing, Kim, with the assistance of then Deputy Executive Director Robert Hawley and Jim Fox[5], prepared a complaint to be signed from Kim complaining of Dunn. This was despite the fact that Dunn had achieved the highest performance reviews and received the maximum annual performance-based bonuses allowed under his contract every year for his stellar work. During Dunn's last year as Executive Director, he was awarded a bonus for double that amount based upon his achievements as Executive Director.

Jim Fox was a part-time contract consultant to Jayne Kim at the recommendation of Beth Jay during the time Kim's alleged wrongdoing took place, prior to being appointed to the BOT by the Supreme Court. As Kim's consultant from 2011 through 2014, Fox developed a close relationship to Kim and was part of Kim's management team, actively participating in meetings when backlog cases were discussed.

Fox testified that he and Jayne Kim perceived Dunn's complaints as an attack on Jayne Kim and an effort to have her fired. Fox acknowledged that backlog numbers did in fact suddenly decrease, as Dunn identified. However, Fox blamed the work of a State Bar data entry clerk, rather than Jayne Kim, for the decrease. (By contrast, Hawley blamed the decrease on a "glitch" in the backlog reporting system.)

Fox additionally testified that, together, Jayne Kim, Bob Hawley, and Jim Fox met to discuss and prepare filing of Jayne Kim's July 31, 2014 complaint. For months, they exchanged and circulated drafts of the complaint, contributed to the content of the complaint, and held multiple in-person meetings regarding the complaint. The draft complaint produced during the Arbitration's discovery phase which was circulated among these parties contained Bob Hawley's initials, "RAH".

While preparing the July 31, 2014 complaint, Bob Hawley, Jim Fox, and Jayne Kim were also in close communication with Beth Jay, the principal research attorney for the Chief Justice of the California Supreme Court. Immediately after Dunn amended his complaint to add Jay as a defendant

[5] Discovery during the Arbitration also revealed that Craig Holden and Beth Jay were in direct communication with Kim, Hawley and Fox at the time Kim's complaint was being drafted.

in the underlying arbitration, Jay resigned from her position with the California Supreme Court.

The Chief Justice disputed that she was ever aware that Dunn misrepresented any of her positions or that he did not act with candor. Her transcript remains under seal.

Beth Jay's testimony during her deposition, does not support the Notice of Disciplinary Charges' allegations:

> **Q. Was it your understanding that the Chief Justice wanted 852 stopped at any point in time?**
> **…**
> **A. Okay. It was my understanding that the Court objected to proceeding with AB852.**
>
> **BY MR. MEISELAS:**
> **Q. And with respect to the objection, did the Court have questions, or did the Court just want the bill to be stopped?**
> **…**
> **A. At least -- at one point, I was instructed by the Chief Justice on behalf of the Court to tell – excuse me -- Mr. Dunn to stop the bill, <u>not that it should not proceed forward</u>, and that was on behalf of the Court.**
> **…**
> **Q. At what point -- some point in time did you tell Mr. Dunn to stop the bill?**
>
> **A. Yes.**
>
> **Q. What did he respond?**
>
> **A. He said he would.**
>
> **Q. Did the bill ever pass?**
>
> **A. No, it did not.**
>
> **Q. Do you know why the bill didn't pass?**
>
> **A. Specifically, no. But -- no.**
>
> **Q. Was the bill eventually stopped?**
>
> **A. Yes.**

(Beth Jay Dep., 59:14-19; 61-63).

MUNGER TOLLES AND OLSON IS HIRED TO INVESTIGATE DUNN AND THE STATE BAR BOT REJECTS ITS FINDINGS

As an initial matter, MTO's retention was unauthorized. On November 18, 2014, the Chief Financial Officer Peggy Van Horn wrote to the State Bar BOT as well as the State Bar Audit Committee reporting that the retention of MTO "circumvented at least two key internal control points."

Around mid-August of 2014, Dunn was first notified of the fact of Kim's July 31, 2014 complaint, although he was not informed of its contents, by Rodriguez.

During MTO's preliminary investigation, Bart Williams requested a four hour interview with Dunn. Dunn voluntarily sat with Williams for eight hours, answering every question in good faith.

After interviewing four additional people, MTO concluded its preliminary investigation and reported back to the BOT in September of 2014 during a closed session.

Despite the fact that this closed Board meeting was the first time the BOT discussed Kim's complaint against Dunn and was intended to remain confidential, Dunn received a call from the Daily Journal shortly after the meeting's conclusion regarding the complaint's allegations and MTO's investigation.

As discussed herein, the BOT rejected the motion to terminate Dunn's employment for cause, after receiving the MTO report.

THE EVIDENCE REFUTES THE ALLEGATION THAT DUNN MISLED THE BOT

The entire basis of the State Bar's allegations is based on the employment case arbitration decision. But the arbitration award is not evidence, and it is not res judicata in this proceeding. Indeed, Dunn's counsel requested that Arbitrator Infante pause the proceeding so that Dunn would be permitted to review documents that one of the MTO lawyers revealed in discovery as nonprivileged, potentially exonerative documents, including handwritten notes taken of Dunn's interview by MTO. Arbitrator Infante denied this request. The denial of Dunn's request to receive discoverable documents is but one example of the Arbitration's many discovery limitations, and the lack of probative effect of any of the Arbitrator's findings.

Indeed, in light of the fact that the findings of the arbitrator are not based on substantial, uncontroverted evidence, it should have no force or effect. The true facts establish that: several BOT Members testified that the MTO investigation was biased from the outset with the predetermined objective to terminate Dunn; BOT Members testified that Dunn was denied fair process; BOT members testified that the BOT voted to allow Dunn to resign and to negotiate the terms of the resignation; BOT Members testified that the BOT acted recklessly in the days leading up to the termination of Dunn;

BOT Members referred to the MTO Report as defamatory. Moreover, the Chief Justice later expressed serious concerns about the questioning from MTO.

By way of example, BOT Member Michael Colantuono[6] testified:

MR. MEISELAS: What did you mean, "Report is as expected"? It had the obvious agenda?

MR. COLANTUONO: That it called for adverse action against Mr. Dunn, yes.

Q: Which you believed to be the agenda from the outset MTO was retained?

A: Yes.

(Colantuono Dep. Vol.1, 34:22-35:5).

BOT member Heather Rosing also testified that she believed MTO, and the incoming State Bar President Craig Holden had an agenda to terminate to Dunn from the outset. Rosing explained that early into MTO's investigation, Holden and Williams called her encouraging her to take Craig Holden's side over the then State Bar President Rodriguez. Rosing testified she was profoundly uncomfortable and believed Craig Holden and MTO were acting completely unprofessional.

Jim Fox moved to terminate Dunn based on the MTO Report at the October 30, 2014 BOT Meeting. The motion was overwhelmingly disapproved of by a vote of 4 in favor and 10 against. The BOT authorized an offer to Dunn to allow him to resign. BOT members David Pasternack and Joanne Mendoza drafted an agreement to document Dunn's reprimand.

Several BOT members disagreed with president-elect Holden's vendetta against Dunn and opposed Holden's efforts to terminate Dunn's employment. BOT Member Dennis Mangers emailed BOT Member Heather Rosing on November 4, 2014, stating:

> "*Everything [Craig Holden] thought he could bring off with Munger Tolles is collapsing around him* and now exasperated by the Geragos counter offensive. Furthermore, your entreaty to him comes late in the game and suggests a collaboration between him and you in which some semblance of fairness on Joe's behalf is undertaken; *fairness for a person he loathes*. . . But you can't fix Craig and you alone can't fix the mess he and his associates have wittingly or unwittingly created."

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[6] Mr. Colantuono has had a highly distinguished career as a City Attorney for at least 8 different cities since 1989. Mr. Colantuono was among the only Board Member whose practice involved regularly advising public boards. Mr. Colantuono had an established attention to detail, assiduous note taking abilities, and a deep background in public interest law.

On November 5, 2014, BOT Member Mangers described the conduct by the BOT and MTO in the following terms: "This malpractice we are witnessing, compounded by the Geragos counter offensive, is leading to a potentially chaotic Board meeting on Friday that could go into the night with no rational path forward emerging. Craig is in a state of near panic right now. . ."

In the same email, BOT Member Mangers called the BOT's conduct a "keystone cop farce." Similarly, BOT Member Colantuono acknowledged that the BOT acted recklessly in the days leading to Dunn's termination.

In contemporaneous text messages to the events as they unfolded, BOT Member Colantuono and BOT Member Rosing stated that the MTO investigation was a "witch hunt," and stated the report "reads like [MTO] had an obvious agenda.…."

Ms. Rosing elaborated further in an email:

"The more I look at that report the angrier I get. Right now I am most angry that they call Luis Rodriguez – a man I know to be of integrity – a flat out, bald faced liar. The example they use is his communication to me but they present 1/2 the story in a highly skewed fashion. This report could be legally defamatory of him – we need to make sure the board takes confidentiality seriously."

BOT Member Joanna Mendoza's testimony reflected her view that MTO made knowingly false findings and refused to interview witnesses with information to support Dunn, including MTO's disregard for her own testimony.

Even the Chief Justice testified that she had concerns about the questioning from MTO.

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THE BOT'S ACTIONS IN FALL 2014, INCLUDING THE OVERWHELMING REJECTION OF A MOTION TO TERMINATE "WITH CAUSE"

The BOT met three times to consider whether to permit Dunn to continue in his role as Executive director: on October 17, 2014, October 30, 2014, and November 7, 2014. It is undisputed, even from the testimony of BOT Member Fox who made the motion to terminate Dunn on October 30, 2014, that the BOT rejected his motions to terminate Dunn until "new data" was presented at the November 7, 2014 BOT Meeting.

After meeting with Hawley, Kim submitted three additional complaints to Holden who forwarded them to the full BOT on November 7, 2014, immediately before the third vote to terminate.

BOT Member Rosing, who is certified as a specialist in legal malpractice law, and chairs her firm's professional liability department, remarked how, "profoundly uncomfortable she was" with Jayne Kim having "direct access to the board about her continuing complaints, while [Dunn] does not."

Rosing further questioned, "Should Joe be given a corresponding opportunity to email the board about what he is thinking and feeling and observing? Right now he cannot even respond to any of this because no one has told him about the charges against him or invited his response."

Indeed, Dunn was not then told the allegations against him in Kim's complaint or provided a copy of the MTO report. Instead, Dunn read about the allegations for the first time when portions of the MTO report were leaked to the press shortly after litigation had commenced.

Between October 30, 2014 and November 7, 2014, based on the full Board's rejection of the effort to terminate Dunn's employment, BOT Members circulated drafts of a private reprimand. Notably, the drafts by BOT Member Mendoza and BOT Member Pasternak reflect an overriding concern not to include language that would cause Dunn to quit. During BOT Member Mendoza's deposition, the following was discussed:

Q. And you state that it "goes without saying it's completely unnecessary. It's just going to get us into an argument during the meeting because it's superfluous 'you better watch out' language. Joe is smart and he will know that he needs to watch his back. The Board did not vote to terminate, which also means they don't want him to quit." Was that your understanding of what the Board felt at that time, that the Board did not vote to terminate, which also means they didn't want him to quit?

A. At that -- at that moment, yes.

Q. And that moment is November 3rd, 2014, four days before Mr. Dunn's ultimately terminated?

MR. REITER: Argumentative.

THE WITNESS: Yes.

BY MR. MEISELAS:

Q. And is your view that's what the Board also felt right before Carol Stevens gave her presentation?

A. Yes.

Mendoza Dep. Vol. 2 73:17-74:19).

During the Arbitration, the Arbitrator[7] did not permit Dunn's counsel to review the full minutes or the power point presentation made by the State Bar's outside employment counsel which led to the vote to terminate employment. To this day, nothing has been revealed about the so-called "new data" that was presented. Ultimately, it became clear that the BOT had been considering the minimal disposition of a private reprimand, which only changed based on a secret power point presentation from the State Bar's outside employment counsel. Suddenly, without giving Dunn any opportunity to be heard on the new presentation, a decision was made to end Dunn's employment. Even then, the recommended separation was not "for cause," and the BOT voted to permit Dunn to resign and receive severance. Incredibly, months later the minutes of this meeting were altered by Hawley to reflect a "for cause" termination which was never voted on or approved by the Board.

The Arbitrator's Final Award clearly found that the draft November 7, 2014 minutes supported the conclusion that the BOT "made no finding that [Dunn] had acted with 'moral turpitude, dishonesty, corruption or [a] similar act of gross misconduct,'" The BOT voted that Dunn be offered the opportunity to resign in exchange for the payment of severance provided in his contract, and only if he did not agree to resign, then to alternatively terminate his contract pursuant to the "termination *without cause* provision of his contract." (emphasis added).

BOT member Colantuono testified that he was appointed by the BOT to draft BOT Meeting Minutes for October 17, 2014, October 30, 2014, and November 7, 2014. The November 7 Minutes drafted by BOT member Colantuono accurately reflected the rejection of the motion to terminate Dunn's employment and rather, to first permit him to resign. Subsequently, and without BOT

[7] Shortly after the conclusion of the Arbitration, Dunn's counsel learned that the Arbitrator failed to provide a complete list of mandatory conflict of interest disclosures including with respect to the various defense counsel Dunn's case and certain professional/social relationships he had with certain key individuals associated with this case.

approval, Hawley unilaterally revised the draft BOT Minutes, to inaccurately reflect a vote to terminate Dunn's employment, without reference to the Board vote to offer Dunn the opportunity to resign.

By way of example, during BOT member Jim Fox's deposition, he was confronted with the actual October 30, 2014 Board Meeting Minutes drafted by Colantuono that stated that the "primary findings" of MTO were not approved and the following exchange took place:

> **Q: Here where it says, "Resolved at the Munger Tolles & Olsen report, discuss this date be received and accepted but not its recommendations."**
>
> **BY MR. MEISELAS:**
>
> **Q: Are you aware that the Munger Tolles recommendations were not adopted?**
>
> **A: Yes.**
>
> **Q: Okay. And what were its recommendations?**
>
> **A: It said that we could reprimand or that we could -- we had a sound basis to terminate.**
>
> **Q: Correct. And then those recommendations were not adopted; correct?**
>
> **A: Not at that meeting.**

The Colantuono October 30 Minutes also show that the vote to terminate Dunn was proposed by Jim Fox and rejected by a 4-10 vote. The November 7, 2014 Minutes drafted by Colantuono reflect that the BOT voted on a "two-step" path to terminate Dunn expressly "*without cause*," and that the vote to terminate based on misconduct was rejected. These Board actions were inexplicably removed from the draft Minutes subsequently unilaterally revised by Robert Hawley.

The draft November 7, 2014 Minutes, circulated to all BOT Members, included the statement that the termination was "without cause."

Notably, by mid-January 2015, the BOT had not approved the November 7, 2014 Minutes. On January 21, 2015, BOT Member Mendoza requested Mr. Hawley bring the Colantuono Minutes to the January 24, 2015 BOT Meeting, since by that time it had become clear that Hawley had inaccurately modified the Minutes to make it appear as if the BOT had voted to terminate Dunn for cause when that had not occurred.

The BOT never found that Dunn engaged in moral turpitude, dishonesty, corruption, or any other acts of gross misconduct. To the contrary, the Colantuono November 7, 2014 Minutes provide the termination was "without cause." BOT Member Colantuono confirmed at his deposition:

> **Q. Okay. But to be very clear, your view as the individual who was officially appointed by the Board and by the president to take notes was that the termination of the CEO's employment was pursuant to a without cause provision?**
>
> **A. That was my understanding in that moment.**

(Colantuono Dep. Vol. 2. 59:20-25).

Even BOT member Fox, who brought the motions to terminate Dunn, admitted that the BOT never voted to terminate Dunn "with cause." Fox testified:

> **A: I can tell you that there was no finding by the board in our action to terminate him that it was for cause.**
>
> **Q: Are you aware that under Mr. Dunn's contract with the State Bar if he is fired without cause, he's entitled to a certain severance pay? Did you know that?**
>
> **A: Yes.**
>
> **Q: Do you know if the State Bar has paid that severance pay to Mr. Dunn?**
>
> **A: I don't believe he has -- the State Bar has paid it.**
>
> **Q: You're aware they are contractually obligated to pay Mr. Dunn severance if he was fired without cause?**
>
> **A: I'm aware that's in the contract.**

(Fox Dep. Vol. 1. 44:18-45:14).

THE BOT HAS NEVER FOUND THAT DUNN ENGAGED IN MORAL TURPITUDE, DISHONESTY, CORRUPTION, OR ACTS OF GROSS NEGLIGENCE

BOT Member Colantuono testified that there was a "civil war" within the Executive Leadership at the State Bar, involving Jayne Kim and Bob Hawley on one side and Dunn on the other side.

> **MR. MEISELAS. This is an e-mail sent November 4th, 2014, and it would be fair to characterize as a various complaint that Ms. Kim is sending to Mr. Holden and copying Mr. Hawley?**

MR. COLANTUONO. Yes.

Q. And did this information provided here in any way inform your decision about the dysfunction of the bar prior to the November 7th, 2014, meeting?

A. Yes.

Q. And this e-mail helped confirm to you that this was a completely dysfunctional place at this point in time?

MR. KABA: Objection to the form of the question.

THE WITNESS: It confirmed my impression that there was a civil war going on inside the bar, yes.

BY MR. MEISELAS:
Q. And that something had to be done?

A. Yes.

Q. And ultimately that decision was to terminate Mr. Dunn? A. Yes.

(Colantuono Dep. Vol. 1 116:16-117:12).

BOT Member Fox also testified that there were factions within the Executive ranks at the State Bar between Dunn on one side and Jayne Kim and Bob Hawley on the other side.

On November 3, 2014 and November 5, 2014, the Geragos Law Firm submitted two whistleblower notices to the entire BOT detailing the unlawful conduct at the State Bar. The whistleblower notices identified the unlawful manipulation of backlog reporting by Jayne Kim, which Dunn previously raised in late 2013 and early 2014 to RAD and President Rodriguez. The whistleblower notices also discussed the unlawful retention of MTO and the conflicts-of-interest in the retention of MTO by Jim Fox and Miriam Krinsky.

Upon receiving these letters, BOT Member Colantuono emailed BOT Member Rosing and stated that this was going to "backfire." BOT Member Mangers referred to these letters as a "counter-offensive" against Jayne Kim. BOT Member Mangers wrote that the "malpractice" the BOT was committing was now exasperated by this "counter-offensive" which caused Craig Holden "panic."

BOT Member Colantuono testified that in the days leading up to the termination of Dunn the BOT was acting "recklessly." **(Colantuono Dep. Vol. 2 3-14).**

Before the so-called "counter-offensive," BOT Member Mangers explained that not only did he support Dunn staying as Executive Director, but the BOT was in discussions regarding a new executive leadership structure Dunn would preside over:

> **MR. MEISELAS: And so as of October 30th, 2014, not only was your view that Dunn should not be terminated at that time, but you were discussing ways that Dunn would oversee a new executive leadership structure in the future where Hawley would be the COO. Those were the discussions taking place as of October 30th, 2014, correct?**
>
> **MR. MANGERS: I recall that there were conversations in this regard.**

(Mangers Dep. 52:16-53:5; 57:5-18).

At the November 7, 2014 BOT Meeting, Mr. Colantuono was told by Bob Hawley that Craig Holden had prevented him from circulating Mr. Colantuono's redline edits of the reprimand. Notably, when the November 7, 2014 BOT Meeting took place, the very first item that was discussed was the November 3, 2014 and November 5, 2014 whistleblower letters. Further, Mr. Colantuono's handwritten notes from the November 7, 2014 BOT Meeting reflect that the BOT began by discussing the Geragos letters. Mr. Colantuono's notes reflect BOT Member discussions regarding the November 3, 2014 and November 5, 2014 letters, including, "Close it down to avoid more complaints . . . **need to fire JD to do this.**" [Emphasis added.]

Thereafter, the State Bar's outside labor and employment attorney Carol Stevens arrived at the BOT Meetings. During the Arbitration, the State Bar asserted an attorney-client privilege over the remainder of the proceedings. However, BOT Member Mendoza confirmed the private letter reprimand letter she had prepared was never addressed, presented, or discussed, which was the intended purpose of the November 7, 2014 BOT Meeting.

BOT Member Mendoza testified:

> **Q Okay. In fact, prior to Ms. Stevens arriving at that board meeting, you and Mr. Pasternak had worked very hard together in preparing a draft reprimand, a motion that was going to be presented, several recommendations that were adopted from the MTO report. You did that, correct, you and Mr. Pasternak?**
>
> **A. That's correct.**
>
> **Q. Were those ever even presented at the November 7th Board meeting?**
>
> **A. Not that I recall, no.**
>
> **Q. And do you know why they weren't presented, or would that infringe upon the attorney-client privilege?**

A. We were going to wait until we received advice of counsel, advice of labor counsel, before we actually made the presentation, if I recall correctly.

(Mendoza Dep. Vol. 2., 16:10-24).

BOT Members have testified that Ms. Stevens made a presentation and discussed "new data" which led to the vote calling for Dunn's resignation or termination. The State Bar refused to permit questioning on what this "new data" was based on attorney-client privilege. Nonetheless, a mere two-days after the Geragos firm submitted the letters, viewed by the BOT as a counteroffensive to Jayne Kim, the BOT voted on a "two-step" path to end Dunn's employment by an 11-4 margin, the opposite vote from October 30, 2014.

What is clear is that the decision to request Dunn's resignation or terminate should he refuse was based on policy considerations, and not on any finding that Dunn had made any material misrepresentations to the BOT. As discussed above, the BOT Minutes, including the original Colantuono Minutes, reflect that the recommendations and findings of MTO were rejected and the final vote was expressly "without cause."

BOT Member Mendoza testified that the Board's decision had nothing to do with the issues raised in the MTO report:

A. I cannot recall what Joe had been told or not. But I certainly agreed that we needed to give Joe an opportunity to respond to the MTO report if we were going to be reprimanding him on those other issues.

Q. But because he was being terminated on those issues he --

A. We were not terminating him on those issues.

Q. What do you mean by that?

A. The decision to terminate was not on those issues.

Q. Not on any of those issues in the MTO report?

A. That's --

Q. That's your understanding?

A. That's my understanding, and that was my – the reason I felt he needed to be terminated was not based on those findings.

Q. Okay. And so because he was not being terminated based on any of the findings or issues raised in the MTO report, therefore, it followed that he didn't need an opportunity to respond to those issues and accusations; correct?

A. That's -- it became unnecessary and moot.

(Mendoza Dep. Vol. 2, 81:21-83:12).

Even BOT Member Fox confirmed "new data" presented by Ms. Stevens led to the reversal of the prior vote and decision to end Dunn's employment:

> **MR. MEISELAS: Okay. And to the best of your understanding was there new data that was presented or information presented from a no vote on October 30th to a yes vote a mere two weeks later?**
>
> **MR. FOX: Yes.**
>
> **Q.: And what was that new data?**
>
> **MR. KABA: To the extent that the information is information you received from counsel I'm going to caution you not to answer. To the extent that your response is simple there were discussions with counsel, that's fine.**
>
> **THE WITNESS: There was information from counsel so I will not be answering upon advice of my counsel.**

(Fox Dep. Vol. 1, 172:4-11).

BOT Member Colantuono also confirmed this fact:

> **MR. MEISELAS: You did not support that decision as of November 5th [to terminate] --**
>
> **MR. COLANTUONO That's right. And I did support that decision on November 7th. Something changed in those two days. And unfortunately I can't elucidate because it's within the scope of my attorney-client relationship with Carol Stevens.**

(Vol. 2, 28:23-29:11).

The resolution adopted by the BOT on November 7, 2014, provided for a "two- step" process, and required Craig Holden to first provide Dunn with an opportunity to resign in exchange for his severance and enter into a mutually agreeable separation agreement, and only if Mr. Dunn did not resign, then the second step would be triggered, to terminate employment without cause.

It is undisputed that new president Craig Holden violated this resolution requiring this two-step approach within an hour of the adjournment of the November 7 BOT meeting. Immediately following the November 7, 2014 BOT Meeting, Craig Holden emailed Dunn.

Dunn was giving a speech on behalf of the State Bar when he received the formal notice of termination from Holden.

Thereafter, a press release was issued on the State Bar Website falsely recounting the findings of the MTO Report as the basis for the decision to terminate Dunn, as well as stating that Holden was assuming the State Bar's executive functions. The coup was complete.

Shortly after Dunn commenced litigation resulting from Holden's violation of the Board's resolution, three press outlets were leaked sections of the confidential MTO report that pertained to Dunn. Discovery during the arbitration showed several individuals on the BOT (Holden and Fox) improperly handled their confidential copy of the report while certain individuals that were never legally allowed to see the report obtained copies.

DUNN'S EXCEPTIONAL BACKGROUND AND CAREER AT THE STATE BAR

A. DUNN'S EXCEPTIONAL BACKGROUND

Joseph Dunn, retired California State Senator and Chair of the Judiciary Committee, former CEO/Executive Director of The State Bar of California, former CEO of the California Medical Association, and current instructor and Special Advisor to the Dean at University of California Irvine School of Law, has distinguished himself during his law career as successful litigator, administrator, and lawmaker with the highest degree of ethics in each practice area. Each role Dunn took on involved positions that required a high degree of demonstrated trust and integrity. Dunn met and surpassed those expectations without any complaints or suggestions of impropriety.

In addition to the many leadership positions that Dunn has held throughout his career in a professional capacity, he has also assumed leadership roles in providing service back to the profession and community through various bar associations, non-profits, an on-line investigative journal and so on.

Dunn has been consistently recognized by the senior leadership of the State's judicial system, including by the current Chief Justice, with invitations to serve on various judicial bodies, including the Judicial Council. As a result, he has received various awards and recognitions by the Judicial Council, the American Judges Association, the California Judges Association, and the State Bar itself. He was specifically asked by the current Chief Justice to work with the CEO of the CA Chamber of Commerce to help found her non-profit, The Foundation for Democracy and Justice.

B. DUNN'S EXEMPLARY PRE-DISPUTE TRACK RECORD AT THE STATE BAR

During his four years there, Dunn succeeded in bringing important reforms to the State Bar. For example, Dunn brought the investigative backlog on open complaints with the State Bar to nearly zero in 2011 which has consistently been kept to fewer than 100 cases in subsequent years.

He worked tirelessly with the CFO to stabilize the finances of the State Bar without ever requesting a fee increase from the legislature.

Dunn directed negotiations with the union leadership at the Bar for a long-term contract that helped turn an antagonistic relationship between union and management into a true partnership.

At the direction of the Board Dunn negotiated for a new Bar building in Los Angeles that, upon move in, was already worth substantially more than the Bar paid for it.

In addition, Dunn improved the Bar's relationship with the state legislature to an all-time high. It directly resulted in the annual State Bar "fee bill," always a very controversial fight with the legislature, being easily passed on the consent calendar during most of the years Dunn served as the CEO. It also resulted in the legislature no longer questioning whether a "unified bar" could ever be trusted to meet its mission of truly protecting the public. (Notably, the State Bar was forced to "de-unify" by the legislature after Dunn was forced out.) It also allowed the State Bar to work closely with legislative leadership to pass an urgent bill giving the State Bar, the first in the nation, the authority to license undocumented individuals in California as lawyers.

Dunn's leadership at the Bar also extended to the unrivaled protection, for the first time in Bar history, for undocumented individuals from persons engaged in the unauthorized practice of law (UPL). The Bar was granted such powers many years earlier but rarely acted on it. This work not only resulted in a State Senate Resolution honoring the Bar's work, it also opened the door for the first time ever, to a close relationship between the Bar and the Counsel General offices for Mexico, all central American countries and many South American Countries, for purposes of a working partnership to protect their undocumented persons in California from unscrupulous attorneys and those engaged in UPL.

Interestingly, this work resulted in other nations and the U.S. State Department taking notice of the improved California State Bar and asking its leadership to provide training on how to regulate attorneys in emerging democracies seeking to establish an independent judiciary. This too resulted in the Bar receiving various recognitions and awards, including from the Judicial Council.

In all his years as Executive Director with the State Bar, Dunn received glowing performance reviews. All of Dunn's formal performance reviews from 2010-2013 were positive and as a result, led Dunn to receive the maximum annual bonuses allowed under his contract every year including

receiving an award that was double that amount during his final year as Executive Director. Dunn's written employment agreement, which was initially set for a three-year term, was renewed in 2014 for a subsequent three-year term by unanimous vote of the Board. However, on November 7, 2014, just one year into his new term as Executive Director, the Board voted to terminate Dunn's employment agreement.

Given this impressive career of serving in some of the most senior positions in the legal and judicial professions and receiving countless awards and recognitions for such work, it should be obvious that the issues that ultimately led to Dunn's removal as Executive Director of the State Bar were based on internal politics from a few individuals who are no longer with the State Bar.

AS A RESULT OF THE STATE BAR'S DELAY IN BRINGING THESE CHARGES, CRUCIAL WITNESSES HAVE DIED

Former State Bar Deputy General Counsel and General Counsel Larry Yee, Former BOT member and past State Bar President David Pasternak, Former State Bar BOT member Jim Fox, and Former BOT member Gwen Moore—all percipient and crucial witnesses to the events underlying this proceeding-- are deceased. It is fundamentally unfair to pursue this matter in light of the unavailability of crucial witnesses.

RESPONSE TO SPECIFIC CHARGES

1. Respondent admits that he was admitted to the practice of law in the State of California on June 10, 1986, and that he was a licensed attorney at all times pertinent to these charges; and is currently a licensed attorney of the State Bar of California.

2. Respondent admits that, at all relevant times, he was the Executive Director of the State Bar of California ("Executive Director"). Respondent did not serve as counsel to the Board of Trustees of the State Bar of California ("Board"), and while he owed duties to his employer, his role was not that of a lawyer.

COUNT ONE

3. Respondent incorporates the responses set forth in paragraphs 1 and 2 in response to paragraph 3 as if set forth in full here.

4. Respondent objects on the basis that paragraph 4 contains improper legal arguments and conclusions. Respondent denies the allegations set forth in paragraph 4, and specifically denies making any material statements or having engaged in any acts of moral turpitude, dishonest or corruption.

5. Respondent objects to paragraph 5 on the grounds that it contains inadmissible legal argument and conclusions and does not constitute any allegation of wrongdoing.

COUNT TWO

6. In connection with paragraph 6, Respondent incorporates all of the responses set forth in connection with Count One.

7. Respondent denies the allegations set forth in paragraph 7. Respondent specifically denies having engaged in any acts of moral turpitude, dishonest or corruption.

8. Respondent objects to paragraph 8 on the grounds that it contains inadmissible legal argument and conclusions and does not constitute any allegation of wrongdoing.

COUNT THREE

9. In connection with paragraph 9, Respondent incorporates all of the responses set forth in connection with Counts One and Two.

10. Respondent objects to paragraph 10 on the grounds that it constitutes improper legal argument and legal conclusions, it contains inaccurate factual allegations, and denies having engaged in any acts of moral turpitude, dishonest or corruption.

11. Respondent objects to paragraph 11 on the grounds that it contains inadmissible legal argument and conclusions and does not constitute any allegation of wrongdoing.

OPPOSITION TO "NOTICES"

Respondent opposes the State Bar's requests that respondent be placed on inactive enrollment status as a member of the State Bar of California.

Respondent opposes any cost assessment or monetary sanctions.

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FIRST AFFIRMATIVE DEFENSE

(Failure To Credit Exculpatory Evidence)

The Notice of Disciplinary Charges, and each of its purported counts, fails to acknowledge or give credit to exculpatory evidence in the possession of the State Bar.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

The Notice of Disciplinary Charges was not filed within the applicable limitations period.

The facts allegations in Counts One, Two and Three of the Notice of Disciplinary Charges establish on the face of the NDC that the action is barred by the period of limitations contained in Rule 5.21 of the Rules of Procedure of the State Bar of California, which provides that a disciplinary proceeding based solely on a complainant's allegations of a disciplinary violation must begin within five years from the date of the violation. *See* Rule 5.21(A). The allegations set forth in the Notice were initiated in 2014 in a complaint prepared by then Chief Trial Counsel Jayne Kim, an individual complainant.

According to Count One, Count Two and Count Three of the NDC, the alleged violations are based on conduct that occurred well over five years from the date of the commencement of this proceeding.

THIRD AFFIRMATIVE DEFENSE

(Laches)

Each and every Count in the Notice of Disciplinary Charges is barred by laches. . The Notice of Disciplinary Charges was filed 8-9 years after the alleged misconduct of which the State Bar and 8 years after an investigation into the alleged misconduct of Respondent was initiated in 2014. Three crucial witnesses have died in the interim.

In a case involving the discipline and dismissal of a professor by the university, the court in *Brown v. State Pers. Bd.* (1985) 166 Cal. App. 3d 1151, reversed the dismissal of the professor, holding no cognizable excuse for the university to delay four years in filing charges of misconduct. The court ruled that the unreasonable delay transformed into the bar of laches where the professor

demonstrated detrimental reliance on the status quo; the lack of initiation of disciplinary proceedings by the university earlier caused the professor to rely on the status quo and continue to devote his energies to his employment and forewent other employment opportunities.

The California Supreme Court has similarly recognized that the imposition of attorney discipline may be challenged on the basis of delay upon a showing of specific prejudice. *Harris v. State Bar* (1990) 51 Cal. 3d 1082, 1089.

FOURTH AFFIRMATIVE DEFENSE

(Unconstitutional Delay)

This proceeding should be dismissed because the State Bar's delay in bringing this proceeding violates Respondent's fundamental constitutional right to a speedy trial.

Although a respondent in a State Bar proceeding is not entitled to the full panoply of due process protections applicable in criminal proceedings, attorney disciplinary proceedings are adversarial proceedings of quasi-criminal nature. *See In re Ruffalo* (1968) 309 U.S. 544, 550-551. In *Serna v. Superior Court* (1985) 40 Cal.3d 239, petitioner (a defendant in a pending misdemeanor prosecution) sought a writ of mandate in the superior court after the municipal court denied his motion to dismiss based on violation of his constitutional right to a speedy trial. The California Supreme Court held that the U.S. Constitutional Sixth Amendment right to speedy trial incorporated through the Fourteenth Amendment applied in the case and held that the more than four-year delay in charging petitioner from the date of the arrest was beyond question presumptively prejudicial.

FIFTH AFFIRMATIVE DEFENSE

(Failure to State Sufficient Facts)

The Notice of Disciplinary Charges, and each of its purported counts, fails to state facts sufficient to state a basis for discipline.

SIXTH AFFIRMATIVE DEFENSE

(Duplicative Charges)

The Notice of Disciplinary Charges contains inappropriate, unnecessary, and immaterial duplicative charges. *Bates v. State Bar* (1990) 51 Cal.3rd 1056, 1060; *In the Matter of Lilley* (Rev. Dept. 1991) 1 Cal. SB Ct. Rptr. 476, 585.

SEVENTH AFFIRMATIVE DEFENSE

(Unreasonable Delay)

The State Bar has unreasonably delayed in its filing of the NDC to the detriment of Respondent. The charges contained in Counts One, Two and Three of the NDC are stale, and there is an irrebuttable presumption of unfairness to Respondent arising from this unreasonable delay. The law has long recognized that extended delay is highly prejudicial to a litigant. Memories fade. Witnesses disappear. Documents are destroyed or misplaced. There are "all the impediments the statute of limitations was designed to avoid." *Chase Securities Corp. v. Donaldson* (1945) 325 U.S. 304, 314.

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Materiality)

The facts on which some or all of the Notice of Disciplinary Charges are based allege immaterial or irrelevant omissions or statements that do not constitute misrepresentations or concealment.

WHEREFORE, Respondent prays that the Court find that Respondent did not commit acts justifying discipline, and that the Notice of Disciplinary Charges be dismissed.

Respectfully submitted,
PANSKY MARKLE ATTORNEYS AT LAW

Dated: August 1, 2022

By: Ellen A Pansky
Ellen A. Pansky, Esq.
Attorney for Respondent
Joseph Lawrence Dunn

PROOF OF SERVICE

In the Matter of Joseph Lawrence Dunn
Case No. 22-O-30655

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1010 Sycamore Ave., Suite 308, South Pasadena, California 91030 and my email address is kchristiansen@panskymarkle.com.

On August 1, 2022, I served the foregoing document(s) described as:

RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

on all interested parties as listed below:

Charles Berwanger, Special Deputy Trial Counsel
Gordon Rees Scully Mansukhani, LLP
101 W. Broadway, Suite 2000
San Diego, CA 92101
cberwanger@grsm.com

Edward J. McIntyre, Special Deputy Trial Counsel
401 West A Street, Suite 1725
San Diego, CA 92101
edmcintyre@ethicsguru.law

(X) **BY E-MAIL:** On August 1, 2022 I transmitted the above-referenced documents via electronic mail to the following e-mail address: cberwanger@grsm.com; edmcintyre@ethicsguru.law

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed August 1, 2022, at South Pasadena, California.

Kathleen Christiansen
Kathleen Christiansen